

election agreement, and the matter subsequently proceeded to a hearing that began on December 13, 2018 and concluded on December 17, 2018. Regional Director Cornele A. Overstreet issued a Decision and Direction of Election (the “Decision”) on February 20, 2019. The Decision established a bargaining unit consisting of ready-mix truck drivers working at 25 CEMEX plants in Southern California¹ and Las Vegas, Nevada.

The Election was simultaneously conducted on March 7, 2019 at ten polling locations in Southern California and two polling locations in Las Vegas, Nevada. The ballots from all 12 polling locations were commingled and counted at Region 28’s local office in Las Vegas, Nevada on March 13, 2019. A total of 361 ballots were cast. CEMEX won the Election by a margin of 179 to 166 with 16 challenged ballots, 14 of which were challenged by the Petitioner.

At the conclusion of the vote count on March 13, the Petitioner was given the opportunity to withdraw their 14 challenges to determine if those ballots would affect the results of the Election. The Petitioner refused to withdraw any of their challenges, and chose to accept the original tally of ballots, which confirmed they had lost the Election.

The Petitioner subsequently filed Objections to the Election (“Objections”) on March 19, 2019, a copy of which was served on the Employer via email that afternoon. (See **Exhibit A.**). However, as set forth in detail below, Petitioner failed to include a short statement explaining the reasons for the Objections as required by Section 102.69(a) of the Board’s Rules and Regulations. Consequently, Employer promptly filed a Motion to Dismiss Petitioner’s Objections on March 22, 2019. (See **Exhibit B.**). Petitioner filed an Opposition to the Motion to Dismiss on March 28, 2019. (See **Exhibit C.**). On March 29, 2019, Regional Director Overstreet issued an Order Denying Employer’s Motion to Dismiss Petitioner’s Objections. (See **Exhibit D.**).

¹ The 23 plants in Southern California span from Santa Barbara in the north down to Mission Valley (near San Diego) in the south, a range of approximately 220 miles.

II. ARGUMENT AND LAW

Sec. 102.69(a) of the Board's Rules and Regulations provides that:

“[w]ithin 7 days after the tally of ballots has been prepared, any party may file with the Regional Director objections to the conduct of the election or to conduct affecting the results of the election ***which shall contain a short statement of the reasons therefor*** and a written offer of proof in the form described in § 102.66(c) insofar as applicable, except that the Regional Director may extend the time for filing the written offer of proof in support of the election objections upon request of a party showing good cause.” (Emphasis added)

Section 102.69(a) further clarifies that “[t]he party filing the objections shall serve a copy of the objections, ***including the short statement of reasons therefor***, but not the written offer of proof, on each of the other parties to the case, and include a certificate of such service with the objections.” (Emphasis added)

In addition, the Board's comments in support of the 2014 changes to the Rules and Regulations explicitly state that “objections ***must*** contain a ***specific, nonconclusory statement of the reasons therefor*** so as to provide notice of the alleged objectionable conduct.” See Fed. Reg. 74414 (Emphasis added).

Moreover, NLRB precedent plainly establishes that objections must be plead with specificity. See Airstream, Inc., 288 NLRB 220, 229 (1988). In Airstream, the Administrative Law Judge confirmed that the “Board's rules (Sec. 102.69) require the objecting party ‘to pinpoint its allegations of misconduct with reasonable clarity.’” *Id.* quoting Atlantic Mills Servicing Corporation of Cleveland, Inc., 120 NLRB 1284, 1287 (1958).

The Objections filed by Petitioner in this case do not contain a “short statement of reasons therefor” as required by Section 102.69(a). Consequently, Petitioner's Objections should be overruled and dismissed. See Aramark Uniform & Career Apparel, 364 NLRB No. 120 (2016).

In Aramark, the Acting Regional Director overruled the petitioner's objections and certified the results of the election because the objections did not comply with the requirements of Section 102.69(a). Specifically, although the objections were timely filed, the union did not serve a copy on the employer and did not file the corresponding offer of proof until seven days later.

In reaching the decision to overrule the objections based on procedural grounds, the Acting Regional Director in Aramark explained that the new election rules that took effect on December 15, 2014, "provides that when filing objections to an election, a party *must* also include (1) a short statement of the reasons for the objections, and (2) an offer of proof in support of the objections which identifies its witnesses and summarizes their testimony." Id. (Emphasis in the original) The Acting Regional Director in Aramark ultimately determined that because the objections failed to comply with the requirements of Section 102.69(a), no further consideration was warranted and the objections were overruled in their entirety. Id. The NLRB denied the subsequent request for review in Aramark, and the results of the election were certified without addressing the merits of the objections. Id.

Like the union in Aramark, the Petitioner in the instant case also failed to comply with the procedural requirements set forth in section 102.69(a). As set forth in detail above, in addition to articulating the actual objection, the Rules and Regulations also require the party filing objections to include a short statement of the reasons triggering those objections. Petitioner's Objections failed to satisfy that requirement in multiple respects.

Indeed, the majority of Petitioner's Objections are comprised of short legal conclusions which fail to identify: (1) the date(s) the objectionable conduct allegedly occurred; (2) the plant location(s) where the alleged incidents took place; (3) the Employer representative(s) or agent(s) who allegedly engaged in the objectionable behavior; (4) the employees who were allegedly

subjected to the objectionable conduct; or (5) any underlying details supporting the legal conclusion set forth in the Objection. The lack of specificity in Petitioner's Objections is particularly egregious when considering the fact that: (a) more than three months elapsed from the date the representation petition was filed until the Election was held; and (b) the unit consists of 369 employees spread out over 25 separate facilities in two states (a distance of over 250 miles).

Amazingly, there is not a single date listed in any of the Objections, nor is there a single plant location identified. Thus, the Employer does not know when the objectionable conduct allegedly took place over the course of the 13 week campaign, nor does the Employer know which of the 25 plants was involved. In fact, none of the Objections even identify the state where the alleged incident occurred. Thus, it is difficult to imagine how the Employer could even begin investigating the bald allegations set forth in Petitioner's Objections under these circumstances.

The most glaring example of noncompliance is found in Objection #7, which simply states “[t]he employer engaged in acts of surveillance of employees during the critical period.” (See **Exhibit A.**). That is the entire objection—no additional information is included. It cannot be disputed that this generic, conclusory allegation fails to comply with the requirements of Section 102.69(a).

Ultimately, the utter lack of detail in Petitioner's Objections is fatally prejudicial, as it makes it impossible for the Employer to investigate the alleged Objections and prepare an effective defense. Moreover, the lack of specificity in Petitioner's Objections is especially prejudicial in this case, as 23 of the 25 plants included in the unit, 329 of the 369 eligible voters, and the overwhelming majority of the Employer's management employees and executives are located in Southern California—more than 250 miles away from the Las Vegas NLRB office where the Objections hearing would be held. Short of closing operations at all 25 plants and having its entire

500+ employee population present in Las Vegas for the duration of the Objections hearing, it will be impossible for the Employer to prepare and present rebuttal witnesses due to the lack of detail in the Petitioner's Objections and the geographical distance between the Employer's facilities and the location of the potential hearing.

It should also be noted that Petitioner is directly responsible for the logistical difficulties associated with ensuring the availability of witnesses for the hearing, as it was Petitioner who inexplicably chose to file the representation petition in Las Vegas, Nevada when more than 90% of the employees in the petitioned-for unit are located in California. Indeed, Petitioner's failure to include specific, nonconclusory statements explaining its Objections is even more egregious when considering the vast geographic scope of the bargaining unit and Petitioner's baffling decision to file the representation petition in Region 28.

As the analysis above demonstrates, Petitioner's Objections simply do not comply with Section 102.69(a) of the Rules and Regulations, as the Objections fail to contain the required "short statement of the reasons therefor." Moreover, the Objections fail to include any specific, nonconclusory statements that would put the Employer on notice of the alleged conduct and provide the Employer with an adequate opportunity to investigate and prepare for a potential hearing.

When the Board amended the Rules and Regulations governing the processing of representation petitions, it imposed a series of mandatory obligations on both petitioners and employers. The Board recently confirmed that failure to comply with those mandatory obligations cannot be excused. See URS Federal Services, Inc., 365 NLRB No. 1 (December 8, 2016) (ordering second election for employer's failure to serve voter list on union, even though the voter

list had been served on the union by the Region within the required two-day period, and there was no prejudice).

Unlike the situation in URS Federal, where the party challenging noncompliance with the Rules and Regulations was not prejudiced in any respect, the Employer in the instant case will be significantly prejudiced if Petitioner's noncompliance with Section 102.69(a) is excused, as the Employer will be deprived of its right to investigate the alleged objectionable conduct and prepare an effective defense. Indeed, as the Board has clearly stated, "[i]t is axiomatic that a respondent cannot fully and fairly litigate a matter unless it knows what the accusation is." M&M Backhoe Service Inc., 345 NLRB 29 (2005)

The Board's decision in URS Federal confirms that a Regional Director is not allowed to excuse a party's noncompliance with the Rules and Regulations unless the rules contain an express delegation of such discretion. Section 102.69(a) does not provide the Regional Director with discretion to excuse a party's failure to file specific, nonconclusory statements identifying the reasons for their objections. Consequently, Regional Director Overstreet either disregarded the Board's Rules and Regulations and/or abused his discretion by excusing the Petitioner's noncompliance with Section 102.69(a).

III. RELIEF REQUESTED

Petitioner's failure to comply with the Board's Rules and Regulations deprives Employer of the due process to which a party responding to objections is entitled. Based upon the foregoing, the Employer respectfully requests the Board to reverse the Regional Director's Order denying its Motion to Dismiss Petitioner's Objections, and issue an Order dismissing Petitioner's Objections with prejudice as a result of their refusal to adhere to the dictates of Section 102.69(a) of the Rules and Regulations.

* * *

Respectfully submitted,

By: /s/ Ross Gardner.

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Fax: 402-391-7363
Email: ross.gardner@jacksonlewis.com

Attorney for Employer

Dated: April 9, 2019

CERTIFICATE OF SERVICE

I hereby certify that on April 9, 2019, I caused a true and correct copy of the foregoing REQUEST FOR SPECIAL PERMISSION TO APPEAL, AND APPEAL FROM, THE REGIONAL DIRECTOR'S ORDER DENYING THE EMPLOYER'S MOTION TO DISMISS PETITIONER'S OBJECTIONS to be served via Electronic mail and U.S. Mail on the Regional Director for Region 28 of the National Labor Relations Board, and on Petitioner's counsel of record at the following addresses:

Cornele A. Overstreet, Regional Director
National Labor Relations Board
Region 28
2600 N. Central Avenue, Suite 1800
Phoenix, AZ 85004
(Via Electronic [Cornele.Overstreet@nrlrb.gov] and U.S. Mail)

Caren P. Sencer, Esq.
Weinberg, Roger & Rosenfeld
1001 Marina Village Parkway, Suite 200
Alameda, CA 94501
(Via Electronic [csencer@unioncounsel.net] and U.S. Mail)

By: /s/ Ross Gardner
Ross Gardner

CAREN P. SENCER, Bar No. 233488
WEINBERG, ROGER & ROSENFELD
A Professional Corporation
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Attorneys for Union INTERNATIONAL BROTHERHOOD OF
TEAMSTERS

UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD
REGION 28

CEMEX,

Employer,

and

INTERNATIONAL BROTHERHOOD OF
TEAMSTERS,

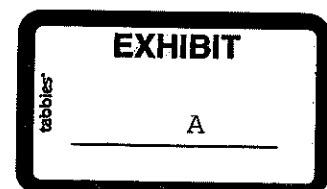
Union.

No. 28-RC-232059

OBJECTIONS TO THE ELECTION

Comes now International Brotherhood of Teamsters, the Union, and pursuant to Section 102.69 of the Rules of the Board as amended, objects to the conduct of the election and/or to conduct affecting the outcome of the election in this matter tallied on March 12, 2019. The employer sabotaged the rights of employees in the election in the following manners:

1. During the critical period, Area Manager Ryan Turner approached multiple employees at various work locations, threatening them with a loss of protection and benefits from the employer in the event that they voted for the Union. Similar statements were made by manager Lorenzo Ponce.
2. The employer threatened the employees with closing of batch plants or other adverse consequences if they supported the Union.
3. The employer, through its agents, threatened employees with changes of job shifts



in the event that they voted yes for the Union.

4. The employer provided more favorable treatment to employees taking a "Vote no" stance from those supporting a "Demand Your Worth" stance by requiring employees who were demanding their worth to take off safety vests and remove signage with Union logos or "Vote yes" messages while allowing those with "Vote no" messages to keep items in their vehicles or on display while on work time.

5. The employer allowed employees expressing a "Vote no" message to campaign for their position while on work time, while denying that same benefit to employees with a "Vote yes" message.

6. The employer held captive audience meetings excluding employees who had taken pro-Union positions. This not only excluded alternative opinions, but required pro-Union employees to perform additional services while allowing anti-Union employees to sit in employer meetings while being provided refreshments on work time.

7. The employer engaged in acts of surveillance of employees during the critical period.

8. The employer increased the use of security at all employer locations during the critical period in attempts to intimidate employees.

9. During the election, the employer intimidated employees seeking to enter batch plants to vote by surrounding vehicles with eight to ten anti-Union employees and managers before the employee could enter the polling area.

By these actions, and others, the employer has engaged in behavior which ruined the laboratory conditions, made a fair vote impossible, and warrants set aside the election.

Dated: 3/19/19

WEINBERG, ROGER & ROSENFELD
A Professional Corporation

By:


CAREN P. SENCER

Attorneys for Union INTERNATIONAL
BROTHERHOOD OF TEAMSTERS

146807\1016214

CERTIFICATE OF SERVICE

I am a citizen of the United States and an employee in the County of Alameda, State of California. I am over the age of eighteen years and not a party to the within action; my business address is 1001 Marina Village Parkway, Suite 200, Alameda, California 94501.

I hereby certify that on March 19, 2019, I electronically filed the forgoing OBJECTIONS TO THE ELECTION with Region 28 of the National Labor Relations Board, by using the Board's Electronic Filing system.

On March 19, 2019, I served the following documents in the manner described below:

OBJECTIONS TO THE ELECTION

- ☒ (BY ELECTRONIC SERVICE) By electronically mailing a true and correct copy through Weinberg, Roger & Rosenfeld's electronic mail system from lhull@unioncounsel.net to the email addresses set forth below.

On the following part(ies) in this action:

Ross M. Gardner, Attorney at Law
Jackson Lewis, PC
10050 Regency Circle, Suite 400
Omaha, NE 68114-3721
ross.gardner@jacksonlewis.com

Paul T. Trimmer, Attorney at Law
Attorney at Law
3800 Howard Hughes Parkway, Suite 600
Las Vegas, NV 89169-5965
paul.trimmer@jacksonlewis.com

I certify under penalty of perjury that the above is true and correct. Executed at Alameda, California, on March 19, 2019.



Lara Hull

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 28**

**CEMEX CONSTRUCTION
MATERIALS PACIFIC, LLC**

Employer

and

**THE INTERNATIONAL
BROTHERHOOD OF TEAMSTERS**

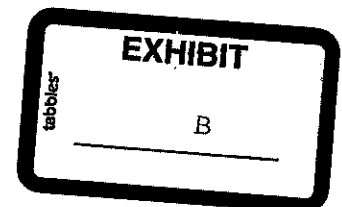
Petitioner

Case No. 28-RC-232059

EMPLOYER'S MOTION TO DISMISS PETITIONER'S OBJECTIONS

Pursuant to Sections 102.69 and 102.24 of the National Labor Relations Board's Rules and Regulations, the Employer, CEMEX Construction Materials Pacific, LLC ("CEMEX" or "Company"), submits this Motion to Dismiss Petitioner's Objections in the above-referenced case. In support of its Motion, CEMEX states as follows:

1. Petitioner filed a representation petition in the above-referenced case on December 3, 2018. The Parties were unable to reach a stipulated election agreement, and the matter subsequently proceeded to a hearing that began on December 13, 2018 and concluded on December 17, 2018.
2. The Region issued a Decision and Direction of Election (the "Decision") on February 20, 2019. The Decision established a bargaining unit consisting of ready-mix truck drivers working at 25 different CEMEX plants in Southern California and Las Vegas, Nevada.
3. The Election was simultaneously conducted on March 7, 2019 at ten polling locations in Southern California and two polling locations in Las Vegas.



4. The ballots from all 12 polling locations were commingled and counted at Region 28's local office in Las Vegas, Nevada on March 13, 2019.
5. A total of 361 ballots were cast. CEMEX won the Election by a margin of 179 to 166 with 16 challenged ballots, 14 of which were challenged by the Petitioner.
6. At the conclusion of the vote count on March 13, the Petitioner was given the opportunity to withdraw their 14 challenges to determine if those ballots would affect the results of the Election. The Petitioner refused to withdraw any of their challenges, and chose to accept the original tally of ballots, which confirmed they had lost the Election.
7. The Petitioner subsequently filed Objections to the Election ("Objections") on March 19, 2019, a copy of which was served on CEMEX via email that afternoon.
8. However, Petitioner failed to include a short statement explaining the reasons for the Objections as required by Section 102.69(a) of the National Labor Relations Board's Rules and Regulations ("Rules and Regulations").
9. Section 102.69(a) states that "[w]ithin 7 days after the tally of ballots has been prepared, any party may file with the Regional Director objections to the conduct of the election or to conduct affecting the results of the election *which shall contain a short statement of the reasons therefor* and a written offer of proof in the form described in § 102.66(c) insofar as applicable, except that the Regional Director may extend the time for filing the written offer of proof in support of the election objections upon request of a party showing good cause." (Emphasis added)
10. Section 102.69(a) further clarifies that "[t]he party filing the objections shall serve a copy of the objections, *including the short statement of reasons therefor*, but not the written

offer of proof, on each of the other parties to the case, and include a certificate of such service with the objections.” (Emphasis added)

11. In addition, the NLRB’s comments in support of the 2014 changes to the election Rules and Regulations explicitly states that “objections must contain a *specific, nonconclusory statement of the reasons* therefor so as to provide notice of the alleged objectionable conduct.” See Fed. Reg. 74414 (Emphasis added).
12. The Objections filed by Petitioner in this case do not contain a “short statement of reasons therefor” as required by Section 102.69(a). Consequently, Petitioner’s Objections should be overruled. See Aramark Uniform & Career Apparel, 364 NLRB No. 120 (2016).
13. In Aramark, the Acting Regional Director overruled the petitioner’s objections and certified the results of the election because the objections did not comply with the requirements of Section 102.69(a). Specifically, although the objections were timely filed, the union did not serve a copy on the employer and did not file the corresponding offer of proof until seven days later.
14. In reaching the decision to overrule the objections based on procedural grounds, the Acting Regional Director in Aramark explained that the new election rules that took effect on December 15, 2014, “provides that when filing objections to an election, a party *must* also include (1) a short statement of the reasons for the objections, and (2) an offer of proof in support of the objections which identifies its witnesses and summarizes their testimony.” Id. (Emphasis in the original)
15. The Acting Regional Director in Aramark ultimately determined that because the objections failed to comply with the requirements of Section 102.69(a), no further consideration was warranted and the objections were overruled in their entirety. Id.

16. The NLRB denied the subsequent request for review in Aramark, and the results of the election were certified without addressing the merits of the objections. Id.
17. Like the union in Aramark, the Petitioner in the instant case also failed to comply with the procedural requirements set forth in section 102.69(a). As set forth in detail above, the Rules and Regulations clearly require the party filing objections to include a short statement of the reasons triggering those objections. Petitioner's Objections failed to satisfy that requirement in multiple respects.
18. To illustrate, the vast majority of Petitioner's Objections are comprised of short legal conclusions which fail to identify: (1) the date(s) the objectionable conduct allegedly occurred; (2) the plant location(s) where the alleged incidents took place; (3) the CEMEX representatives who allegedly engaged in the objectionable behavior; (4) the eligible voters who were allegedly subjected to the objectionable conduct; or (5) any underlying details supporting the legal conclusion set forth in the Objection.
19. Amazingly, there is not a single date listed in any of the Objections, nor is there a single plant location identified. Thus, CEMEX does not know when the conduct allegedly took place over the course of the 13 week campaign, nor does the Company know which of the 25 plants was involved. In fact, none of the Objections even identify the state where the alleged incidents occurred. The utter lack of detail and specificity in the Objections is fatally prejudicial, as it makes it impossible for CEMEX to investigate the alleged Objections and prepare an effective defense.
20. The lack of specificity and nonconclusory statements in Petitioner's Objections is especially prejudicial in this case, as 23 of the 25 plants included in the unit, 329 of the 369 eligible voters, and the overwhelming majority of CEMEX's management employees

and executives are located in Southern California—more than 250 miles away from the Las Vegas NLRB office where the Objections hearing would be held. Short of closing operations at all 25 plants and having its entire 500+ employee population present in Las Vegas for the duration of the Objections hearing, it will be impossible for CEMEX to prepare and present rebuttal witnesses due to the lack of specificity in the Petitioner's Objections and the geographical distance between the CEMEX facilities and the location of the potential hearing.

21. It should also be noted that Petitioner is directly responsible for the logistical difficulties associated with ensuring the availability of witnesses for the hearing, as it was Petitioner who inexplicably chose to file the representation petition in Las Vegas, Nevada when more than 90% of the employees in the petitioned-for unit are located in California. Indeed, Petitioner's failure to include specific, nonconclusory statements explaining their Objections is even more egregious when considering the vast geographic scope of the bargaining unit and Petitioner's baffling decision to file the representation petition in Region 28.
22. As the analysis above demonstrates, Petitioner Objections clearly do not comply with Section 102.69(a) of the Rules and Regulations, as the Objections fail to contain the required "short statement of the reasons therefor." Moreover, the Objections fail to include any specific, nonconclusory statements that would put CEMEX on notice of the alleged conduct and adequately afford the Company the opportunity to investigate and prepare for a potential hearing.
23. The Board's decision in URS Federal Services, Inc. 365 NLRB No. 1 (Dec. 8, 2016) confirms that a Regional Director is not allowed to excuse a party's noncompliance with

the Rules and Regulations unless the rules contain an express delegation of such discretion. Section 102.69(a) does not grant the Regional Director discretion to excuse the Petitioner's failure to file specific, nonconclusory statements identifying the reasons for their Objections in this case.

24. Consequently, Petitioner's Objections should be overruled, as the Region should not waste agency or party resources on a hearing when the Petitioner clearly failed to comply with Section 102.69(a) of the Rules and Regulations.

25. This Motion is being electronically filed consistent with the NLRB E-Filing System protocols.

26. A copy of this Motion is being served simultaneously by electronic mail on opposing counsel.

WHEREFORE, pursuant to Sections 102.69 and 102.24 of the Board's Rules and Regulations, CEMEX respectfully requests the Region to overrule the Petitioner's Objections and certify the results of the Election based on the valid ballots that were counted on March 13, 2019.

Date: March 22, 2019

Respectfully submitted,

By: /s/ Ross Gardner.

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Attorney for Respondent

FILED ELECTRONICALLY

March 22, 2019

I hereby certify that copies of EMPLOYER'S MOTION TO DISMISS PETITIONER'S OBJECTIONS were mailed this same date to:

Cornele A. Overstreet, Regional Director
National Labor Relations Board
Region 28
2600 N. Central Avenue, Suite 1800
Phoenix, AZ 85004
*(Via Electronic [Cornele.Overstreet@nlrb.gov]
and U.S. Mail)*

Caren P. Sencer, Esq.
Weinberg, Roger & Rosenfeld
1001 Marina Village Parkway, Suite 200
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*(Via Electronic [csencer@unioncounsel.net] and
Via U.S. Mail)*

By: /s/ Ross Gardner .
Ross Gardner

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Attorneys for Union INTERNATIONAL BROTHERHOOD OF
TEAMSTERS

UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD
REGION 28

CEMEX,

Employer,

and

INTERNATIONAL BROTHERHOOD OF
TEAMSTERS,

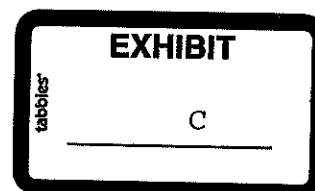
Union.

No. 28-RC-232059

**OPPOSITION TO EMPLOYER'S
MOTION TO DISMISS OBJECTIONS
TO THE ELECTION**

The employer asserts that the Union's objections to the election should be dismissed because it does not contain a "short statement for the reasons of the objections." However the federal regulations do not define the level of detail to be provided in the objections to meet this standard. There is no regulation or guidance that directs an objecting party to include the dates, plant locations, employer representatives involved, eligible voters involved, or other underlying details in the short statement. The details that the employer identifies that should be part of a short statement are the details that are commonly contained in the offer of proof, as they are in this case. By regulation, the employer is not privileged to receive the offer of proof.

The cases cited by the employer do not support its position. Specifically, *URS Federal Services, Inc.*, 365 NLRB No. 1 (2016) goes to the employer's failure to comply with the obligation to provide a voter eligibility list. By comparison to that total failure to adhere to a



statutory requirement, here, there can be no dispute that both the objections and an offer of proof were in fact filed with the Region. Similarly, in *Aramark Uniform & Career Apparel, LLC*, 364 NLRB No. 120 (2016), the offer of proof was not provided in a timely manner. The regulations specifically call for the offer to proof to be filed within 7 days after the tally of ballots. § 102.69(a). In contrast, in this case, the offer of proof was timely filed, including the detailed information that the employer contends should have been included in the objections.

The employer is no way prejudiced by the way that these objections were put forward because prior to hearing, once the Regional Director makes a determination as to which objections are going to hearing, there will be a brief explanation of the objections on which evidence will be taken and the basis for those objections as laid out in the offer of proof. This is the normal process that has been used inside this Region and others, since the implementation of the 2015 election rules. As an example of the objections that have been filed and have resulted in a hearing in this Region, the Union points to the objections filed in the *David Saxe Productions LLC*, 28-RC-219130. The *David Saxe* objections are in the same style as those in this case and were accepted as specific enough to result in a hearing.

The remainder of the Employer's motion, focusing on the location of the hearing, the number of employees involved, potential witness availability issues, and number of potential locations where objectionable behavior may have been exhibited is irrelevant to the determination as to whether or not the election rules were complied with, and thus all portions of the motion based on such extraneous issues should be disregarded.

The Employer's motion to dismiss should be denied.

Dated: March 27, 2019

WEINBERG, ROGER & ROSENFELD
A Professional Corporation

By: /S/ CAREN P. SENCER
CAREN P. SENCER

Attorneys for Union INTERNATIONAL
BROTHERHOOD OF TEAMSTERS

146807\1018064

CERTIFICATE OF SERVICE

I am a citizen of the United States and an employee in the County of Alameda, State of California. I am over the age of eighteen years and not a party to the within action; my business address is 1001 Marina Village Parkway, Suite 200, Alameda, California 94501.

I hereby certify that on March 27, 2019, I electronically filed the forgoing **OPPOSITION TO EMPLOYER'S MOTION TO DISMISS OBJECTIONS TO THE ELECTION** with Region 28 of the National Labor Relations Board by using the Board's Electronic Filing system and served the document in the manner described below:

- ☒ (BY ELECTRONIC SERVICE) By electronically mailing a true and correct copy through Weinberg, Roger & Rosenfeld's electronic mail system from kshaw@unioncounsel.net to the email addresses set forth below.

On the following part(ies) in this action:

Ross M. Gardner, Attorney at Law
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ross.gardner@jacksonlewis.com

Paul T. Trimmer, Attorney at Law
Attorney at Law
3800 Howard Hughes Parkway, Suite 600
Las Vegas, NV 89169-5965
paul.trimmer@jacksonlewis.com

I certify under penalty of perjury that the above is true and correct. Executed at Alameda, California, on March 27, 2019.

/S/ KATRINA SHAW
Katrina Shaw

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 28**

**CEMEX CONSTRUCTION MATERIALS
PACIFIC, LLC**

Employer

and

Case 28-RC-232059

**INTERNATIONAL BROTHERHOOD OF
TEAMSTERS**

Petitioner

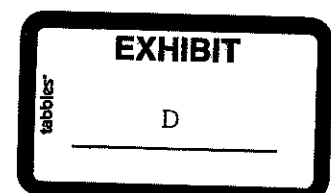
ORDER DENYING EMPLOYER'S MOTION TO DISMISS OBJECTIONS

On March 19, 2019, the Petitioner filed timely objections to conduct affecting the results of the election and a timely offer of proof in support thereof. On March 22, 2019, the Employer filed a Motion to Dismiss Petitioner's Objections, and, on March 28, 2019, the Petitioner filed an Opposition to Employer's Motion to Dismiss Petitioner's Objections.

In its Motion to Dismiss Petitioner's Objections, the Employer contends that the objections should be dismissed because they do not include "a short statement of the reasons therefor" as required by Section 102.69(a) of the Rules and Regulations of the National Labor Relations Board. Specifically, the Employer contends that the objections are not in conformance with that requirement because the majority of them do not identify the date and location of the alleged objectionable conduct, the identity of the agent of the Employer alleged to have engaged in the conduct, the identity of the voters allegedly subjected to the conduct, or underlying details supporting the legal conclusions set forth therein.

However, the objections identify the specific conduct the Petitioner contends was objectionable, and nothing in Section 102.69(a) requires objecting parties to provide dates, locations, identities of actors and affected voters, or evidentiary details. Moreover, the Petitioner submitted a timely and adequate offer of proof describing evidence that, if introduced at hearing, could be grounds for setting aside the election.

The Petitioner's objections are sufficient to put the Employer on notice of its alleged objectionable conduct, and its offer of proof is sufficient to establish that a hearing on whether there was any conduct constituting grounds for setting aside the election is warranted. There is no requirement that an objecting party provide the kind of evidentiary details (including information that may disclose the identity of witnesses and of employees engaged in activities in support of a labor organization) with the objections served on other parties.



The Employer cites two cases, *Aramark Uniform & Career Apparel*, 364 NLRB No. 120 (2016) (*Aramark*), and *URS Federal Services, Inc.*, 365 NLRB No. 1 (2016) (*URS*), for the proposition that objections must be dismissed if not in conformance with the Board's Rules and Regulations and that Regional Directors cannot excuse a party's noncompliance with the Rules and Regulations. However, those cases involved complete failure to comply with specific procedural requirements of the rules: *Aramark* involved a failure to serve objections on the employer or to timely file and offer of proof, and *URS* involved a failure to comply with the obligation to timely provide a voter list. Here, the Petitioner has filed objections, including a short statement of the reasons therefore, and there is no requirement in the Rules and Regulations that the Petitioner provide the additional information the Employer contends it must provide.

The Employer will be afforded full access to the evidence presented by the Petitioner in support of its objections at the hearing, and to present its own evidence in response. The Employer expresses a concern that, since the employees in the bargaining unit in this case were employed at 25 different facilities in Southern California and Southern Nevada, there may be an unexpected need for it to call witnesses who will not be present at the location of the hearing when it is time for the Employer to present its evidence. However, accommodations for any unanticipated and unavoidable logistical issues of this nature can be requested from the hearing officer.

In sum, I find that the Employer has not established grounds for dismissal of the objections. Accordingly,

IT IS ORDERED that the Employer's Motion to Dismiss Petitioner's Objections is denied.

Dated in Phoenix, Arizona on the 29th day of March 2019.

/s/ Cornele A. Overstreet

Cornele A. Overstreet, Regional Director
National Labor Relations Board, Region 28